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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 HOANG MINH TRAN,
12 Plaintiff,
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14 v.
15 WILLIAM D. GORE, et al.,
16 Defendants.
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Civil No. 10cv464-GPC (DHB)

**REPORT AND
RECOMMENDATION:
GRANTING DEFENDANT JOHN
GILL, M.D.'S MOTION FOR
SUMMARY JUDGMENT**

[ECF No. 204]

18 Currently before the Court is Defendant John Gill M.D.'s Motion for Summary
19 Judgment. (ECF No. 204.) Plaintiff has opposed the motion (ECF No. 224), and
20 Defendant has filed a reply. (ECF No. 226.) The Court has considered the parties
21 submissions and the supporting documentation, and for the reasons set forth below,
22 hereby **RECOMMENDS** that Defendant John Gill M.D.'s Motion for Summary
23 Judgment be **GRANTED**.

24 **I. PROCEDURAL BACKGROUND**

25 Plaintiff, a former state prisoner, is proceeding *pro se* in a civil rights action filed
26 under 42 U.S.C. § 1983. Plaintiff alleges his Eighth and Fourteenth Amendment rights
27 were violated on three separate occasions while he was in pretrial custody.

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1 The first event – which is the only event that involves Dr. Gill and is the only event
2 implicated in the current motion – occurred in January 2009. Plaintiff alleges that Dr.
3 Gill was deliberately indifferent to his serious medical needs for not prescribing Plaintiff
4 the anti-seizure medication Dilantin. Plaintiff claims he had requested Dilantin for a
5 seizure disorder, but his requests were ignored. Thereafter, Plaintiff suffered a seizure
6 on January 4, 2009, which resulted in emergency medical treatment.

7 The second incident occurred in February 2009. Plaintiff asserts that on February
8 2, 2009, he was assaulted by a transportation deputy while traveling to the courthouse in
9 a prison bus. Plaintiff claims the attack caused him to suffer a ruptured hernia that
10 required surgery. The third incident occurred in March 2009. Plaintiff alleges that on
11 March 2, 2009, he was assaulted by three deputies in his prison cell.

12 Plaintiff initiated this lawsuit on March 2, 2010. (ECF No. 1.) On May 5, 2011,
13 Plaintiff filed a First Amended Complaint (“FAC”). (ECF No. 34.) In the FAC, Plaintiff
14 named several additional Defendants, including Dr. Gill. (ECF No. 34.) On May 25,
15 2012, Plaintiff was permitted to file a Second Amended Complaint (“SAC”) that
16 substituted Robert Callahan for Defendant Doe Hanson. (*See* ECF Nos. 79, 131.)

17 On July 10, 2012, Dr. Gill filed an Answer to the SAC. (ECF No. 142.) On
18 August 15, 2012, the Court granted Dr. Gill’s request to modify the Court’s Scheduling
19 Order to allow him time to conduct discovery and file dispositive motions. (ECF No.
20 156.) On January 17, 2013, the Court granted Dr. Gill’s Ex Parte Application to extend
21 his pretrial motions deadline. (ECF No. 184.)

22 On February 19, 2013 Dr. Gill filed the instant Motion for Summary Judgment.
23 (ECF No. 204.) On May 30, 2013, Plaintiff filed a Response.¹ (ECF No. 224) Dr. Gill
24 filed a Reply on June 7, 2013. (ECF No. 226.)

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26 ¹In his Response, Plaintiff indicates he is also requesting a competency hearing.
27 (ECF No. 224.) He attaches several exhibits, apparently in support of that request. (ECF
28 No. 224 at 13-58.) The Court has already considered and denied Plaintiff’s request for
a competency hearing. (ECF No. 216.) Plaintiff has not presented any information in his
Response that would cause the Court to reconsider its prior decision. Therefore, to the
extent Plaintiff is moving for a competency hearing, his request is **DENIED**.

II. FACTUAL ALLEGATIONS

Plaintiff alleges that Dr. Gill was deliberately indifferent to his serious medical needs from October 30, 2008 to January 4, 2009, because he did not prescribe Plaintiff the anti-seizure medication Dilantin. (ECF No. 34 at 5; ECF No. 79 at 3².) Plaintiff states he filed numerous requests for medical attention and grievances about not receiving Dilantin. (*Id.* at 6.) Plaintiff claims that Dr. Gill was aware of his grievances but failed to act. (*Id.*) Plaintiff also claims that he yelled at facility nurses for his seizure medication, but they ignored him, and refused to issue his medication. (*Id.*; ECF No. 34-1 at 8.) Plaintiff states that as a result, on January 4, 2009, he suffered an epileptic seizure and was taken by ambulance to the emergency room. (ECF No. 34 at 6.) Plaintiff alleges that tests at the hospital showed the level of Dilantin in his blood was insufficient. (*Id.* at 6.)

In late 2008 and early 2009, Plaintiff was a pretrial detainee at the George F. Bailey Detention Facility (the “Facility”). (ECF No. 34-1 at 1-2.) On October 10, 2008, a Medical Intake Form was filled out for Plaintiff. (ECF No. 204-3 at 5-11.) The form indicates that Plaintiff answered “no” to the questions asking whether he had/has seizures, other medical problems, or was currently taking any medications. (*Id.* at 6-7, 11.) On October 31, 2008, Plaintiff submitted a Medical Request form, requesting “Seizures Medication, Please!” (*Id.* at 12.) On November 13, 2008, Plaintiff submitted a grievance report indicating that during the prior fourteen days, he had requested to see a doctor three times for seizures/epilepsy and he needed medical attention for his chronic illness. (*Id.* at 13.) Thereafter, Plaintiff was scheduled for a medical appointment on November 23, 2008. (*Id.* at 18.) Plaintiff’s medical appointment was subsequently rescheduled seven times due to scheduling and security issues. (*Id.* at 18-20.)

Dr. Gill works at George F. Bailey Detention Facility on a rotating shift basis. (ECF No. 204-4 at 1, ¶ 1.) Dr. Gill is one of several doctors who provide medical services on a shift basis at the Facility. (*Id.*) Dr. Gill typically works one 8 hour shift,

²In the SAC, Plaintiff re-alleges and incorporates by reference, the allegations from his FAC. (ECF No. 79 at 4.)

1 four times per month. (*Id.*) The Facility controls the scheduling of inmates for medical
2 appointments, and the doctors do not determine who they see or when. (*Id.* at 2, ¶3.)
3 Because the doctors work on a shift basis, they do not have patients assigned to them in
4 an ongoing way. (*Id.* at 11 ¶ 5.) Dr. Gill is not involved in the daily distribution of
5 medication to inmates at the Facility. (*Id.* at 3, ¶ 8.)

6 On December 14, 2008, Plaintiff was seen by Dr. Gill. (ECF No. 204-3 at 19.)
7 This was the only time Dr. Gill examined Plaintiff. (ECF No. 204-4 at 2, ¶6.) Plaintiff
8 reported he had a history of seizures and complained of a runny nose. (ECF Nos. 204-3
9 at 19; 204-4 at 2, ¶6.) Based on his history, Dr. Gill prescribed the anti-seizure
10 medication Dilantin to Plaintiff. (*Id.*) Dr. Gill administered a 500 mg loading dosage of
11 Dilantin that same day. (*Id.*) He also ordered daily administrations of Dilantin, and
12 ordered that Plaintiff's Dilantin levels be checked. (*Id.*)

13 The medical records submitted by Dr. Gill indicate that Plaintiff received Dilantin
14 eleven times between December 15, 2008 and January 4, 2009. (ECF No. 204-4 at 7.)
15 On December 29, 2008, while working a shift at the Facility, Dr. Gill performed a chart
16 check on Plaintiff. (ECF No. 204-4 at 3, ¶ 7.) Facility staff had questioned the Dilantin
17 prescription because Plaintiff's medical intake form stated he didn't have seizures. (ECF
18 Nos. 204-3 at 25; 204-4 at 3, ¶ 7.) Dr. Gill instructed the staff to continue administering
19 the Dilantin, and explained that he had diagnosed Plaintiff with a history of seizures.
20 (*Id.*)

21 Frank Mannix, M.D. submitted an expert declaration on behalf Dr. Gill. (ECF No.
22 204-4 at 10-15.) Dr. Mannix opined that Dilantin was the appropriate medication to
23 prescribe for treating seizures. (*Id.* at 12, ¶ 9.) Dr. Mannix further stated that when
24 Dilantin is administered, the patient's blood must be drawn and analyzed to ensure the
25 patient receives the proper amount of medication. (*Id.*) If a patient's Dilantin levels are
26 not monitored (i.e., the patient refuses to allow blood draws) the standard practice is to
27 continue to administer smaller doses of Dilantin and watch the patient for symptoms like
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1 lethargic behavior, which would indicate the patient is receiving too much Dilantin. (*Id.*
2 at 12, ¶ 9, 11.)

3 Between December 15, 2008 and January 4, 2009, Plaintiff refused multiple blood
4 draws to check his Dilantin levels. (ECF Nos. 204-3 at 21; 204-4 at 20-24) Specifically,
5 Plaintiff refused blood draws on December 21, 2008, December 24, 2008, December 29,
6 2008, December 30, 2008, and January 1, 2009. (*Id.*) Three of those times, Plaintiff
7 expressly acknowledged that he was refusing blood draws for his Dilantin levels. (ECF
8 No. 204-4 at 21, 23, and 24.) On December 30, 2008, Facility staff requested a chart
9 check due to Plaintiff's persistent blood draw refusals. (ECF No. 204-3 at 26.) The
10 physician on duty, Dr. Latham, recommended that Plaintiff be scheduled for a medical
11 appointment in the clinic to address the issue. (*Id.*)

12 On January 4, 2009, Plaintiff suffered a seizure in the presence of an attending
13 psychiatrist. (ECF Nos. 204-3 at 29; 204-4 at 25.) Plaintiff was immediately taken to the
14 hospital. (ECF No. 204-3 at 29.) At the hospital, Plaintiff's blood was drawn and
15 Dilantin was present in his system. (ECF Nos. 204-3 at 4; 204-4 at 29-30.) Plaintiff was
16 given 1000 mg of Dilantin at the hospital and returned to the Facility that same day.
17 (ECF No. 204-3 at 27; 204-4 at 28.) The medical records from the hospital note that
18 Plaintiff was non-compliant in taking his Dilantin medication and refused Dilantin level
19 checks. (ECF No. 204-4 at 28, 30.)

20 On January 5, 2009, Plaintiff had a followup appointment at the Facility and was
21 seen by Dr. Adams. Plaintiff indicated that he would start taking his Dilantin. (ECF No.
22 204-3 at 35.)

23 III. DISCUSSION

24 A. Legal Standard for Motion for Summary Judgment

25 Summary judgment is appropriate under Rule 56(c) where the moving party
26 demonstrates the absence of a genuine issue of material fact and entitlement to judgment
27 as a matter of law. *See* Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322
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1 (1986). “A material issue of fact is one that affects the outcome of the litigation and
2 requires a trial to solve the parties’ differing versions of the truth.” *S.E.C. v. Seaboard*
3 *Corp.*, 677 F.2d 1301, 1306 (9th Cir. 1982).

4 A party seeking summary judgment always bears the initial burden of establishing
5 the absence of a genuine issue of material fact. *Celotex*, 477 U.S. at 323. The moving
6 party can satisfy this burden in two ways: (1) by presenting evidence that negates an
7 essential element of the nonmoving party’s case; or (2) by demonstrating that the
8 nonmoving party failed to make a showing sufficient to establish an element essential to
9 that party’s case on which that party will bear the burden of proof at trial. *Id.* at 322-23.
10 “Disputes over irrelevant or unnecessary facts will not preclude a grant of summary
11 judgment.” *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass’n*, 809 F.2d 626, 630 (9th
12 Cir. 1987).

13 The burden then shifts to the non-moving party to establish, beyond the pleadings,
14 that there is a genuine issue for trial. *Celotex*, 477 U.S. at 324. To successfully rebut a
15 properly supported motion for summary judgment, the non-moving party “must point to
16 some facts in the record that demonstrate a genuine issue of material fact and, with all
17 reasonable inferences made in the [non-moving party’s] favor, could convince a
18 reasonable jury to find for the [nonmoving party].” *Reese v. Jefferson School Dist. No.*
19 *14J*, 208 F.3d 736, 738 (9th Cir. 2000) (citing Fed. R. Civ. P. 56; *Celotex*, 477 U.S. at
20 323; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986)). *See also Galen v.*
21 *County of Los Angeles*, 477 F.3d 652, 658 (9th Cir. 2007) (noting that the non-moving
22 party may defeat summary judgment if she makes a showing sufficient to establish a
23 question of material fact requiring a trial to resolve). “To defeat a summary judgment
24 motion ..., the non-moving party ‘may not rest upon the mere allegations or denials’ in
25 the pleadings.” Fed. R. Civ. P. 56(e). Further, the non-moving party cannot create a
26 genuine issue of material fact by simply making argumentative assertions in legal
27 memoranda. *S.A. Empresa, Etc. v. WalterKidde & Co.*, 690 F.2d 1235, 1238 (9th Cir.
28 1982). Instead, the non-moving party must “go beyond the pleadings and by her own

1 affidavits, or by the ‘depositions, answers to interrogatories, and admissions on file’
2 designate ‘specific facts showing that there is a genuine issue for trial.’” *Celotex*, 477
3 U.S. at 324. Conclusory allegations without supporting evidence are insufficient to create
4 an issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993). A
5 verified complaint or motion may be used as an opposing affidavit under Rule 56 to the
6 extent it is based on personal knowledge and sets forth specific facts admissible in
7 evidence. *McElyea v. Babbitt*, 833 F.2d 196, 197-98 (9th Cir. 1987) (per curiam);
8 *Johnson v. Meltzer*, 134 F.3d 1393, 1399-1400 (9th Cir. 1998). To “verify” a complaint,
9 the plaintiff must swear or affirm that the facts in the complaint are true “under the pains
10 and penalties of perjury.” *Schroeder v. McDonald*, 55 F.3d 454, 460 n.10 (9th Cir. 1995).

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12 “The district court may limit its review to the documents submitted for the purpose
13 of summary judgment and those parts of the record specifically referenced therein.”
14 *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026, 1030 (9th Cir. 2001).
15 Therefore, the Court is not obligated “to scour the record in search of a genuine issue of
16 triable fact.” *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996) (citing *Richards v.*
17 *Combined Ins. Co. of Am.*, 55 F.3d 247, 251 (7th Cir. 1995)). If the moving party fails
18 to discharge this initial burden, summary judgment must be denied and the Court need
19 not consider the nonmoving party’s evidence. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144,
20 159-60 (1970).

21 **B. Deliberate Indifference to Serious Medical Needs**

22 Claims by pretrial detainees are analyzed under the Due Process Clause of the
23 Fourteenth Amendment, rather than the Eighth Amendment. *Bell v. Wolfish*, 441 U.S.
24 520, 535 n.16 (1979). However, because pretrial detainees’ rights under the Fourteenth
25 Amendment are comparable to prisoners’ rights under the Eighth Amendment, the Ninth
26 Circuit applies the same standards to a pretrial detainee’s claims. *Frost v. Agnos*, 152
27 F.3d 1124, 1128 (9th Cir. 1998).

28 Deliberate indifference to an inmate’s serious medical needs “may appear when

1 prison officials deny, delay or intentionally interfere with medical treatment, or it may
2 be shown by the way in which prison physicians provide medical care.” *McGuckin v.*
3 *Smith*, 974 F.2d 1050, 1059 (9th Cir. 1992), *overruled on other grounds by* *WMX*
4 *Technologies v. Miller*, 104 F.3d 1133 (9th Cir. 1997). “A determination of ‘deliberate
5 indifference’ involves an examination of two elements: the seriousness of the prisoner’s
6 medical need and the nature of the defendant’s response to that need.” *Id.* Thus, to state
7 a claim for deliberate indifference, Plaintiff must first demonstrate the existence of a
8 serious medical condition of which the prison officials should have been aware. *Id.* A
9 “serious” medical need exists if the failure to treat a prisoner’s condition could result in
10 further significant injury or the “unnecessary and wanton infliction of pain.” *Estelle v.*
11 *Gamble*, 429 U.S. 97, 104 (1976). Thus, the “existence of an injury that a reasonable
12 doctor or patient would find important and worthy of comment or treatment; the presence
13 of a medical condition that significantly affects an individual’s daily activities; or the
14 existence of chronic and substantial pain are examples of indications that a prisoner has
15 a ‘serious’ need for medical treatment.” *McGuckin*, 974 F.2d at 1059-60.

16 Second, in order to show deliberate indifference, Plaintiff must establish that prison
17 officials had a “sufficiently culpable state of mind.” *Wallis v. Baldwin*, 70 F.3d 1074,
18 1076 (citing *Farmer v. Brennan*, 511 U.S. 825, 836 (1994)). Under the second prong, the
19 inmate must show (1) that the defendant purposefully ignored or knowingly failed to
20 respond to his pain or medical need, and (2) harm caused by the indifference. *Jett v.*
21 *Penner*, 439 F.3d 1091, 1096 (9th Cir. 2006); *McGuckin*, 974 F.2d at 1060. The
22 indifference to medical needs also must be substantial; inadequate treatment due to
23 malpractice, or even gross negligence, does not amount to a constitutional violation.
24 *Estelle v. Gamble*, 429 U.S. 97, 106 (1976); *Wood v. Housewright*, 900 F.2d 1332, 1334
25 (9th Cir. 1990). Moreover, differences in judgment between an inmate and prison
26 medical personnel regarding appropriate medical diagnosis and treatment are not enough
27 to establish a deliberate indifference claim. *Sanchez v. Vild*, 891 F.2d 240, 242 (9th Cir.
28 1989).

1 **C. Analysis**

2 Dr. Gill contends there is no evidence indicating he was deliberately indifferent to
3 any serious medical need of Plaintiff. Therefore, Dr. Gill argues he is entitled to
4 summary judgment on Plaintiff's deliberate indifference claim. (ECF No. 204-1 at 5-7.)

5 In this case, no party disputes that Plaintiff's seizure disorder was a serious
6 medical condition. Therefore, the Court finds that Plaintiff has sufficient evidence that
7 he had a serious medical need. However, Plaintiff has not presented any evidence from
8 which a reasonable jury could conclude that Dr. Gill purposefully ignored or failed to
9 respond to Plaintiff's medical needs. To establish deliberate indifference, "there must be
10 a purposeful act or failure to act on the part of the defendant." *McGuckin*, 974 F.2d at
11 1060. An official must be "aware of the facts from which the inference could be drawn
12 that a substantial risk of harm exists, and he must also draw the inference." *Clement v.*
13 *Gomez*, 298 F.3d 898, 904 (9th Cir. 2002), *citing Farmer v. Brennan*, 511 U.S. 825, 835
14 (1994). Negligence is insufficient. *Id.*

15 Plaintiff alleges that Dr. Gill was deliberately indifferent to his serious medical
16 needs because he did not prescribe Plaintiff the anti-seizure medication Dilantin. (ECF
17 No. 34 at 5.) However, Plaintiff's claim is belied by the record. The undisputed facts
18 show that Dr. Gill prescribed Dilantin for Plaintiff the first time he saw Plaintiff on
19 December 14, 2008 (ECF No. 204-3 at 19, 204-4 at 2, ¶ 6), Plaintiff received his Dilantin
20 (ECF No. 204-4 at 7), Dr. Gill performed a chart check confirming the prescription (ECF
21 No. 204-3 at 25; 204-4 at 3, ¶ 7), and Dilantin was present in Plaintiff's system on the
22 date of his seizure. (ECF No. 204-3 at 4; 204-4 at 29-30.)

23 To the extent Plaintiff complains about the delay in receiving a Dilantin
24 prescription from the time that he was taken into custody until December 14, 2008, he has
25 not shown any evidence that the delay was attributable to Dr. Gill. Nor has he shown that
26 Dr. Gill had any knowledge of Plaintiff's seizure disorder prior to examining Plaintiff on
27 December 14, 2008. Upon intake into the Facility, Plaintiff answered "no" to the
28 questions asking whether he had seizures, other medical problems, or was taking

1 medication. (ECF No. 204-3 at 6-7, 11.) Plaintiff first requested seizure medication on
2 October 30, 2008. (ECF No. 204-3 at 12.) Due to scheduling and security issues,
3 Plaintiff was not seen in the clinic until December 14, 2008. (ECF No. 204-3 at 18-20.)
4 Dr. Gill states in his sworn declaration that he does not have any authority over the
5 scheduling of medical appointments for inmates, and that it is common for appointments
6 to be rescheduled due to security concerns. (ECF No. 204-4 at 2, ¶¶ 2-3.)

7 To the extent Plaintiff's claim rests on his allegation that his Dilantin level was
8 too low, at most his claim is for medical malpractice, which does not constitute deliberate
9 indifference. *See Estelle*, 429 U.S. at 106 (“[A] complaint that a physician has been
10 negligent in diagnosing or treating a medical condition does not state a valid claim of
11 medical mistreatment under the Eighth Amendment. Medical malpractice does not
12 become a constitutional violation merely because the victim is a prisoner.”). Moreover,
13 Plaintiff has not presented any evidence that Dr. Gill was aware that Plaintiff's Dilantin
14 level may have been insufficient. Dr. Gill prescribed Dilantin to Plaintiff and also
15 ordered blood testing to monitor his levels. (ECF No. 204-3 at 19.) However, Plaintiff
16 repeatedly refused the blood draws, thereby preventing medical staff from ensuring his
17 levels were sufficient. (ECF Nos. 204-4 at 20-24; 204-4 at 12, ¶ 9.)

18 In his opposition to the Motion for Summary Judgment, Plaintiff claims Dr. Gill
19 was deliberately indifferent to his medical needs because he failed to “make absolutely
20 sure” Plaintiff was administered Dilantin.³ (ECF No. 224 at 10.) However other than
21 making this bare allegation, Plaintiff has not pointed to any evidence that there were other
22 actions Dr. Gill could have taken, or what those actions would have been. *See Estate of*
23 *Tucker ex rel. Tucker*, 515 F.3d at 1033 n.14 (“bare allegations without evidentiary
24 support are insufficient to survive summary judgment”). Dr. Gill prescribed Dilantin for
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26 ³Plaintiff's Response is a combined opposition to both Defendants Ortega and
27 Marina's Motion for Judgment on the Pleadings and Dr. Gill's Motion for Summary
28 Judgment. The Court addressed Plaintiff's arguments regarding Defendants Ortega and
Marina separately in the Report and Recommendation on their Motion for Judgment on
the Pleadings. (See ECF No. 233.)

1 Plaintiff and he confirmed via a chart check that Plaintiff was to receive the medication.
2 (ECF No. 204-3 at 19, 25.) Dr. Gill states in his sworn declaration that he is not involved
3 in the daily distribution of medications at the Facility. (ECF No. 204-4 at 3, ¶ 8.)
4 Plaintiff has not presented any evidence to dispute these facts. Even assuming Plaintiff
5 was not administered his medication as prescribed, that does not arise to deliberate
6 indifference on the part of the Dr. Gill, as Plaintiff has presented no evidence that Dr. Gill
7 knew he wasn't getting his medication. As to Plaintiff's allegations that he was yelling
8 and demanding to be given Dilantin, he has not shown any evidence that Dr. Gill was
9 present or knew that Plaintiff had been shouting about his medication. Moreover, the
10 undisputed facts indicate Plaintiff was receiving Dilantin. The medical records show he
11 received Dilantin eleven times between December 15, 2008 and January 4, 2009. (ECF
12 No. 204-4 at 7.) Further, as Plaintiff acknowledges, he had Dilantin in his system on the
13 day of his seizure. (ECF Nos. 34 at 6; 204-3 at 4; 204-4 at 29-30.)

14 Under *Celotex*, 477 U.S. 317, the nonmoving party cannot withstand a motion for
15 summary judgment if that party fails to make a "showing sufficient to establish the
16 existence of an element essential to that party's case, and on which that party will bear
17 the burden of proof at trial." *Id.* at 322. Here, the Court finds Dr. Gill has adequately
18 shown an absence of probative evidence to support Plaintiff's deliberate indifference
19 claim. Therefore, summary judgment is appropriate.

20 Accordingly, the Court hereby **RECOMMENDS** that Dr. Gill's Motion for
21 Summary Judgment be **GRANTED**.

22 **IV. CONCLUSION AND RECOMMENDATION**

23 After a thorough review of the record in this matter and based on the foregoing
24 analysis, this Court **RECOMMENDS** Defendant John Gill, M.D.'s Motion for Summary
25 Judgment be **GRANTED**.

26 This Report and Recommendation of the undersigned Magistrate Judge is
27 submitted to the United States District Judge assigned to this case, pursuant to the
28 provisions of 28 U.S.C. § 636(b)(1) and Civil Local Rule 72.1(d).

1 IT IS HEREBY ORDERED that **no later than August 2, 2013**, any party may file
2 and serve written objections with the Court and serve a copy on all parties. The
3 documents should be captioned "Objections to Report and Recommendation."

4 IT IS FURTHER ORDERED that any reply to the objections shall be filed and
5 served **no later than ten days** after being served with the objections. The parties are
6 advised that failure to file objections within the specific time may waive the right to raise
7 those objections on appeal of the Court's order. *Martinez v. Ylst*, 951 F.2d 1153, 1156-57
8 (9th Cir. 1991).

9 **IT IS SO ORDERED.**

10 DATED: July 18, 2013

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12 DAVID H. BARTICK
13 United States Magistrate Judge
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